

(b) Solicitations containing one or more items subject to statutory cost limitations shall state (1) the applicable cost limitation for each affected item in a separate schedule; (2) that an offer which does not contain separately-priced schedules will not be considered; and (3) that offers must contain a certification that the price on each schedule includes an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or not subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbalanced if its prices are significantly less than cost for some work, and overstated for other work.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **36.206 Liquidated damages.**

The contracting officer shall evaluate the need for liquidated damages in a construction contract in accordance with 11.502 and agency regulations.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 48249, Sept. 18, 1995]

#### **36.207 Pricing fixed-price construction contracts.**

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis (when a unit price is paid for a specified quantity of work units), or (3) using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

#### **36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.**

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

#### **36.209 Construction contracts with architect-engineer firms.**

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

#### **36.210 Inspection of site and examination of data.**

The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the Government which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous